

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

DENNIS and ANNETTE WOLCOTT,

No. 10-10749

Debtor(s).

Memorandum on Mystery Motion


Debtors Dennis and Annette Wolcott moved the court for avoidance of a judicial lien on their exempt real property which they alleged was created when the State of California filed a "Notice of Lien pursuant to Article 5 of Chapter 6 of Title 9 of the Code of Civil Procedure." Having no idea what that was, the court insisted on a hearing notwithstanding lack of opposition. At the hearing, counsel for the Wolcotts was unable to articulate what sort of lien his motion related to.

After considerable sleuthing and several inferences drawn from the schedules, it appears that the Wolcotts were parties to a class action lawsuit in which the State of California was a defendant. The State won dismissal of the class action as to it and an award of fees and costs against the plaintiffs, including the Wolcotts. The State then filed a notice pursuant to Cal. Code of Civil Procedure § 708.410, creating a lien in the class action against any recovery the Wolcotts might be entitled to receive from other defendants.

The Wolcotts have not claimed any interest in the class action as exempt. Therefore, the lien created by the notice does not impair any exemption. There is no evidence that the State has obtained

1 a lien on the Wolcotts' real property. Accordingly, their motion will be denied without prejudice.
2 Counsel for the Wolcotts may submit an appropriate form of order.

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4 Dated: December 14, 2010

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7 Alan Jaroslovsky
8 U.S. Bankruptcy Judge
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